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Attorneys for the  
United States of America

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
JUDI ANN PAPAGNI,  
  
Defendant.

CASE NO. 1:12-cr-00203-AWI  
  
MEMORANDUM OF PLEA AGREEMENT  
PURSUANT TO RULE 11(c) OF THE  
FEDERAL RULES OF CRIMINAL  
PROCEDURE  
  
DATE: December 16, 2013  
TIME: 10:00 a.m.  
CTRM: HON. ANTHONY W. ISHII

Pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, the United States of America, by and through Benjamin B. Wagner, the United States Attorney for the Eastern District of California, and Assistant United States Attorney MARK J. MCKEON, and Defendant, JUDI ANN PAPAGINI, and her attorney, ROGER T. NUTTALL, have agreed as follows.

This document contains the complete Memorandum of Plea Agreement ("Plea Agreement") between the United States Attorney's Office for the Eastern District of California ("Government") and defendant JUDI ANN PAPAGINI regarding this

1 case. This Plea Agreement is limited to the United States  
2 Attorney's Office for the Eastern District of California and  
3 cannot bind any other federal, state, or local prosecuting,  
4 administrative, or regulatory authorities, including the  
5 Internal Revenue Service.

6 1. Charges.

7 The defendant acknowledges that she has been charged in a  
8 twenty-one count indictment as follows:

9 Making or Presenting a False Claim Against the United  
10 States, in violation of Title 18, United States Code,  
11 Section 287.

12 2. Nature, Elements and Possible Defenses.

13 The defendant has read the charges against her contained in  
14 the indictment, and those charges have been fully explained to  
15 her by her attorney. Further, the defendant fully understands  
16 the nature and elements of the crimes in Counts Twelve and  
17 Fifteen of the indictment to which she is pleading guilty,  
18 together with the possible defenses thereto, and has discussed  
19 them with her attorney.

20 The elements of the crime of Making or Presenting a False  
21 Claim Against the United States are:

22 First, The defendant made or presented or caused to  
23 be made or presented to the Internal Revenue  
Service, a claim against the United States;

24 Second, At the time of the claim, the Internal  
25 Revenue Service was a department or agency  
of the United States;

26 Third, The claim presented was fictitious or  
27 fraudulent in that it contained false  
28 information that was material to the claim;  
and

Fourth, The defendant knew that the claim was false.

3. Agreements by the Defendant.

(a) Defendant agrees that this plea agreement shall be filed with the court and become a part of the record of the case.

(b) Defendant agrees to enter a plea of guilty to Counts Twelve and Fifteen of the indictment which charges her with Making or Presenting a False Claim Against the United States, in violation of Title 18, United States Code, Section 287.

(c) Defendant understands and agrees that she will not be allowed to withdraw her plea should the Court fail to follow the government's sentencing recommendations.

(d) Defendant knowingly and voluntarily waives her Constitutional and statutory rights to appeal her plea, conviction, restitution imposed, forfeiture order and sentence. This waiver of appeal includes, but is not limited to, an express waiver of defendant's right to appeal her plea, conviction, restitution imposed, forfeiture order and sentence on any ground, including any appeal right conferred by 18 U.S.C. § 3742, and defendant further agrees not to contest her plea, conviction, restitution imposed, forfeiture order and sentence in any post-conviction proceeding, including but not limited to a proceeding under 28 U.S.C. § 2255.

(e) Defendant further acknowledges that her plea of guilty is voluntary and that no force, threats, promises or representations have been made to anybody, nor agreement reached, other than those set forth expressly in this agreement,

1 to induce the defendant to plead guilty.

2 (f) Defendant agrees that her base offense level for  
3 Making or Presenting a False Claim is six (6) pursuant to  
4 Section 2B1.1(a)(1)(A) of the United States Sentencing  
5 Commission Guidelines Manual; plus eight (8) levels for an  
6 intended loss more than \$70,000 but not more than \$120,000  
7 (§ 2B1.1(b)(1)(E)).

8 (g) Defendant understands that the Court must consult the  
9 Federal Sentencing Guidelines (as promulgated by the Sentencing  
10 Commission pursuant to the Sentencing Reform Act of 1984, 18  
11 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by  
12 United States v. Booker and United States v. Fanfan, 543 U.S.  
13 220 (2005)), and must take them into account when determining a  
14 final sentence. Defendant understands that the Court will  
15 determine a non-binding and advisory guideline sentencing range  
16 for this case pursuant to the Sentencing Guidelines. Defendant  
17 further understands that the Court will consider whether there  
18 is a basis for departure from the guideline sentencing range  
19 (either above or below the guideline sentencing range) because  
20 there exists an aggravating or mitigating circumstance of a  
21 kind, or to a degree, not adequately taken into consideration by  
22 the Sentencing Commission in formulating the Guidelines.  
23 Defendant further understands that the Court, after consultation  
24 and consideration of the Sentencing Guidelines, must impose a  
25 sentence that is reasonable in light of the factors set forth in  
26 18 U.S.C. § 3553(a).

27 (h) Defendant agrees to waive all rights under the "Hyde  
28 Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), to

1 recover attorneys' fees or other litigation expenses in  
2 connection with the investigation and prosecution of all charges  
3 in the above-captioned matter and of any related allegations  
4 (including without limitation any charges to be dismissed  
5 pursuant to this Agreement and any charges previously  
6 dismissed).

7 (i) Defendant agrees the conduct to which she is pleading  
8 requires mandatory restitution pursuant to Section  
9 3663A(c)(1)(A)(ii) of Title 18, United States Code, and agrees  
10 to pay to the United States the full amount of restitution,  
11 including but not limited to restitution for conduct covered in  
12 the factual basis, and losses in those counts to be dismissed as  
13 part of the plea agreement pursuant to 18 U.S.C. § 3663A(a)(3),  
14 in the amount of \$82,564.

15 (j) Defendant agrees to make a full and complete  
16 disclosure of defendant's assets and financial condition, and  
17 will complete the United States Attorney's Office's  
18 "Authorization to Release Information" and "Financial Affidavit"  
19 within five (5) weeks from the entry of the defendant's change  
20 of plea. The defendant also agrees to have the court to enter  
21 an order to that effect. The defendant understands that this  
22 plea agreement is voidable by the government if the defendant  
23 fails to complete and provide the described documentation to the  
24 United States Attorney's office within the allotted time.

25 (k) If the defendant's conviction on the count to which  
26 she is pleading is ever vacated at the defendant's request, or  
27 her sentence is ever reduced at her request, the government  
28 shall have the right to: (1) prosecute the defendant on any of

1 the counts to which she pleaded guilty; (2) reinstate any counts  
2 that may be dismissed under this agreement; and (3) file any new  
3 charges that would otherwise be barred by this agreement. The  
4 decision to pursue any or all of these options is solely in the  
5 discretion of the United States Attorney's Office. By signing  
6 this agreement, the defendant agrees to waive any objections,  
7 motions, and defenses she might have to the government's  
8 decision, including Double Jeopardy. In particular, she agrees  
9 not to raise any objections based on the passage of time with  
10 respect to such counts including, without limitation, any  
11 statutes of limitation or any objections based on the Speedy  
12 Trial Act or the Speedy Trial Clause of the Sixth Amendment.

13 If it is determined that the defendant has violated any  
14 provision of this Agreement or if the defendant successfully  
15 moves to withdraw her plea: (1) all statements made by the  
16 defendant to the government or other designated law enforcement  
17 agents, or any testimony given by the defendant before a grand  
18 jury or other tribunal, whether before or after her Agreement,  
19 shall be admissible in evidence in any criminal, civil, or  
20 administrative proceedings hereafter brought against the  
21 defendant; and (2) the defendant shall assert no claim under the  
22 United States Constitution, any statute, the Federal Rules of  
23 Criminal Procedure, Rule 410 of the Federal Rules of Evidence,  
24 or any other federal rule, that statements made by the defendant  
25 before or after this Agreement, or any leads derived therefrom,  
26 should be suppressed. By signing this Agreement, the defendant  
27 waives any and all rights in the foregoing respects.

28 (1) Defendant recognizes that pleading guilty may have

1 consequences with respect to her immigration status if she is  
2 not a citizen of the United States. The defendant's plea to the  
3 violation herein may subject her to automatic deportation and  
4 removal from the United States. See 8 U.S.C. § 1227(a)(1), et  
5 seq. Defendant affirms that she has been advised of the  
6 immigration consequences of pleading guilty and wants to plead  
7 guilty regardless of any immigration consequences that may  
8 result from her plea, even if such consequence includes her  
9 automatic deportation and removal from the United States after  
10 completing any sentence of incarceration due to her plea.

11 4. Agreements by the Government.

12 (a) The government will recommend a two-level reduction  
13 (if the offense level is less than 16) or a three-level  
14 reduction (if the offense level reaches 16) in the computation  
15 of her offense level if the defendant clearly demonstrates  
16 acceptance of responsibility for her conduct as defined in  
17 Section 3E1.1 of the United States Sentencing Commission  
18 Guidelines Manual.

19 (b) The government agrees that the defendant's base  
20 offense level is six (6) pursuant to Section 2B1.1(a)(1)(A) of  
21 the United States Sentencing Commission Guidelines Manual, plus  
22 eight (8) levels for an intended loss more than \$70,000 but not  
23 more than \$120,000 (§ 2B1.1(b)(1)(E)).

24 (c) To the extent such a recommendation is consistent with  
25 the United States Sentencing Guidelines and imposition of  
26 sentences under Title 18, the government will recommend that  
27 Count One run concurrent to Count Eleven.  
28



1 (d) The defendant acknowledges and understands that the  
2 government makes no other representations to her regarding  
3 fines, whether any other specific offense characteristics apply  
4 to her conduct, the restitution owed, her criminal history or  
5 criminal history points under Chapter Four or whether additional  
6 enhancements or reductions under Chapter Three or Five of the  
7 United States Sentencing Guidelines apply and defendant  
8 understands that the government is free to comment and to make  
9 recommendations to the court and the probation office regarding  
10 those matters.

11 (e) The government agrees to dismiss the remaining counts  
12 of the indictment at the time of sentencing.

13 5. Factual Basis.

14 Defendant will plead guilty because she is in fact guilty  
15 of the crimes set forth in Counts One and Eleven of the  
16 indictment. Defendant also agrees that the following are the  
17 facts of this case, although she acknowledges that, as to other  
18 facts, the parties may disagree:

19  
20 The Fresno Scheme Development Center,  
21 Questionable Refund Program, suspected that  
22 Judi Papagini was preparing false income tax  
23 returns. On June 17, 2011, IRS-CID special  
24 agents executed a search warrant at her home  
25 for evidence regarding her filing of false  
26 claims with the IRS. When Papagini was  
27 interviewed during the execution of the  
28 search warrant, she admitted that she had  
taken online tax courses, prepared tax  
returns for some people, and used Turbo Tax  
to create and electronically file the  
individual income tax returns. An HP  
computer seized at the residence had copies  
of the suspected false tax returns on the  
hard drive. Papagini also admitted that she  
had deposited refunds from the identified  
tax returns into her personal bank account



1 or onto prepaid debit cards. She often took  
2 a percentage of the refund and sometimes  
kept more than half of the refund.

3 The false returns/claims all reported false  
4 and fraudulent Household Help (HSH) wages  
not substantiated by Forms W-2 or other  
5 documents. HSH wages are typically earned  
by household employees such as nannies,  
6 housekeepers or gardeners. These types of  
employees often do not receive a Form W-2 or  
7 1099 to document their income. The HSH wage  
amounts were carefully chosen by Papagini to  
8 qualify the individuals for the maximum or  
near maximum Earned Income Tax Credit and  
9 the Child Tax Credit amounts available for  
those tax years.

10 The individuals in whose names Papagini  
prepared and filed the false and fraudulent  
11 claims for refunds were interviewed and  
confirmed the amounts Papagini reported as  
12 HS wages on their income tax returns were  
false. Some of the individuals Papagini  
13 prepared refund claims for had no knowledge  
Papagini had obtained their identifying  
14 information and filed false and fraudulent  
refund claims in their names.

15 The claims charged in the indictment total  
16 \$82,564.

17 J.K. (Count 12). When interviewed, J.K.  
said she had known Papagini for about 2  
18 years. She did not file a 2010 tax return  
because she only received Social Security  
19 ("SSI") benefits. She never provided  
Papagini or anyone else with information to  
20 prepare her tax returns for 2008 and 2010.  
In count 12, with respect to the tax return  
21 for 2008, Papagini reported HSH wages of  
\$4,565, and on or about October 15, 2009,  
22 presented a false claim for a refund in the  
amount of \$2,156.

23 S.S (Count 15). When interviewed, the  
24 witness said that she did not file a 2010  
tax return. Her purse had been stolen a  
25 year prior, which contained her Social  
Security Number and driver's license  
26 information. She said that she did not know  
Papagini. In count 15, with respect to the  
27 tax return for 2010, Papagini reported HSH  
wages of \$9,565, and on or about February  
28 14, 2011, presented a false claim for a  
refund in the amount of \$5,215.

At the time the defendant presented the claims, the Internal Revenue Service was a department or agency of the United States. The claims presented were fraudulent in that they contained false information that was material to the claim. The defendant knew that the claims were false.

6. Potential Sentence.

The following is the maximum potential sentence which defendant faces as to each count:

(a) Imprisonment.

Maximum: Five (5) year imprisonment.

(b) Fine.

Maximum: Two Hundred and Fifty Thousand dollars (\$250,000.00)

(c) Both such fine and imprisonment.

(d) Restitution- Mandatory

(e) Term of Supervised Release:

Maximum: Three (3) years.

(Should the defendant violate any of the terms of her supervised release, she can be returned to prison for the period of supervised release actually imposed by the Court or two (2), whichever is less.)

(f) Penalty Assessment.

Mandatory: One Hundred dollars (\$100.00).

7. Waiver of Rights.

Defendant understands that by pleading guilty she surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the

1 charges against her, she would have the right to be represented  
2 by an attorney at all stages of the proceedings, and would have  
3 a right to a public and speedy trial. The trial could be either  
4 a jury trial or a trial by a judge sitting without a jury.  
5 Defendant has a right to a jury trial. However, in order that  
6 the trial be conducted by the judge sitting without a jury,  
7 defendant, the government and the judge all must agree that the  
8 trial be conducted by the judge without a jury.

9 (b) If the trial were a jury trial, the jury would be  
10 composed of twelve lay persons selected at random. Defendant  
11 and her attorney would have a say in who the jurors would be by  
12 removing prospective jurors for cause where actual bias or other  
13 disqualification is shown, or without cause by exercising  
14 peremptory challenges. The jury would have to agree unanimously  
15 before it could return a verdict of either guilty or not guilty.  
16 The jury would be instructed that defendant is presumed innocent  
17 and that it could not convict her unless, after hearing all the  
18 evidence, it was persuaded of her guilt beyond a reasonable  
19 doubt.

20 (c) If the trial were held before a judge without a jury,  
21 the judge would find the facts and determine, after hearing all  
22 the evidence, whether or not she was persuaded of the  
23 defendant's guilt beyond a reasonable doubt.

24 (d) At a trial, whether by a jury or a judge, the  
25 government would be required to present its witnesses and other  
26 evidence against defendant. Defendant would be able to confront  
27 those government witnesses and her attorney would be able to  
28 cross-examine them. In turn, defendant could present witnesses

1 and other evidence on her own behalf. If the witnesses for  
2 defendant would not appear voluntarily, she could require their  
3 attendance through the subpoena power of the Court. At trial,  
4 the defendant would also have the right to assistance of legal  
5 counsel. If she could not afford legal counsel, one would be  
6 appointed for her by the court at no expense to her.

7 (e) At a trial, defendant would have a privilege against  
8 self-incrimination so that she could decline to testify, and no  
9 inference of guilt could be drawn from this refusal to testify.

10 Defendant understands that by pleading guilty she is  
11 waiving all of the rights set forth above and defendant's  
12 attorney has explained those rights to her and the consequences  
13 of her waiver of those rights.

14 8. Questions by Court.

15 Defendant understands that if the court questions her under  
16 oath, on the record and in the presence of counsel, about the  
17 offense to which she has pleaded guilty, her answers, if false,  
18 may later be used against her in a prosecution for perjury.

19 9. Entire Agreement.

20 This plea of guilty is freely and voluntarily made and not  
21 the result of force or threats or of promises apart from those  
22 set forth in this plea agreement. There have been no  
23 representations or promises from anyone as to what sentence this  
24 Court will impose.

25 10. Court not a Party.

26 It is understood by the parties that the sentencing court  
27 is neither a party to nor bound by this agreement and the  
28

1 sentencing judge is free to impose the maximum penalties as set  
 2 forth in paragraph 6. Further, in making its sentencing  
 3 decision, the Court may take into consideration any and all  
 4 facts and circumstances concerning the criminal activities of  
 5 defendant, including activities which may not have been charged  
 6 in the indictment.

7 11. Presentence Report.

8 Defendant understands that the United States Probation  
 9 Office is not a party to this agreement and will conduct an  
 10 independent investigation of defendant's activities and her  
 11 background. It will then prepare a presentence report which it  
 12 will submit to the Court as its independent sentencing  
 13 recommendation. In addition, the government will fully apprise  
 14 the Probation Office, as well as the Court, of the full and true  
 15 nature, scope and extent of the defendant's criminal activities,  
 16 including information on her background and criminal history.

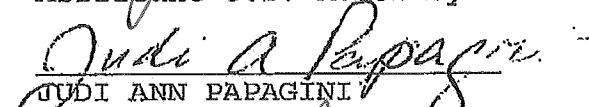
17 Dated: 11-15-13

BENJAMIN B. WAGNER  
 United States Attorney


18 By: 

MARK J. MCKEON  
 Assistant U.S. Attorney

21 Dated: 11-14-13

  
 JUDI ANN PAPAGINI  
 DEFENDANT

23 Dated: 11-14-13

  
 ROGER T. NUTTAL  
 DEFENDANT'S ATTORNEY